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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/688,588      | 10/18/2003  | Robert Kincaid       | 10031032-1          | 2257             |

22878 7590 03/29/2007

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| EXAMINER |
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SIMS, JASON M

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1631

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 03/29/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/688,588 | <b>Applicant(s)</b><br>KINCAID, ROBERT |  |
|                              | <b>Examiner</b><br>Jason M. Sims     | <b>Art Unit</b><br>1631                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-20, 22, 40-47, 49, 50 and 56-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-20, 22, 40-47, 49, 50 and 56-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's response filed 1/16/2007 is acknowledged.

Claims 1-14, 17-20, 22, 40-47, 49-50, and 56-60 are the current claims hereby under examination.

### ***Claim Rejections - 35 USC § 112***

Applicant's amendment, see claims, filed 1/16/2007, with respect to the rejection of claims 1-14, 17-20, 22, 40-47, 49-50, and 56-60 under 35 USC 112 as lacking antecedent basis has been fully considered and are persuasive. The rejection of has been withdrawn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-14, 17-20, 22, 40-47, 49-50, and 56-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 43, and 56 lines 9, 8, and 10 respectively contain the wording "converting the identified data items to determine graphical representations," which is deemed as vague and indefinite as to what it refers. It is unclear as to how converting the identified data causes the graphical representations to be determined. Clearer claim wording is required.

Claims 1, 43, and 56, contain the wording "a first c x d graphical representations," which is vague and indefinite as to what it refers. It appears from the singular "a" that there is one "c x d graphical representation," but the plurality form of "graphical representations" makes it appear that there is a plurality of c x d graphical representations. Clearer claim wording is required.

Claims 1, 2, 8, 10, 12, 13, 17, 18, 19, 43, 44, 47, 49, 56, 57, 58, 59, and 60 contain the wording "pseudo-data vector," which is deemed as vague and indefinite. It is unclear as to what exactly a "pseudo-data vector" refers. Clearer claim wording is required.

Claims 2, 44, 45, 57 contain the wording "descriptive data," which is deemed as vague and indefinite. It is unclear as to what exactly the wording "descriptive data" refers. Clearer wording is required.

Claims 2, 44, 50, and 57 contain the wording "converting the selected row of descriptive data to said pseudo-data vector," which is deemed as vague and indefinite. It is unclear as to what the word "converting" exactly refers or how the data is converted and to what. Clearer claim wording is required.

Claim 8, 9, 10, 11, 13, 19, 45, 46, 58 contains the wording "pseudo-data values," which is deemed as vague and indefinite. It is unclear as to exactly what the wording "pseudo-data values" refers. Clearer claim wording is required.

Claim 9 contains the wording "the selected row lacks a descriptive data value," which is deemed vague and indefinite. It is unclear how claim 9, which is dependent from claim 8, which involves a step of converting a selected row of descriptive data to

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pseudo-data values, contains a row that lacks a descriptive data value when it is dependent from a claim that involves a row of descriptive data values. Clearer claim wording is required.

Claim 19 contains the word "emphasizing, emphasized, and de-emphasizing," which have been deemed as vague and indefinite. It is unclear as to what exactly these words refer. Clearer claim wording is required.

Claim 10, recites the limitation "the positive and negative descriptive binary data values", in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 11, recites the limitation "the predefined pseudo-data values." There is insufficient antecedent basis for this limitation in the claim.

Claims 3-7, 14, 20, 22, and 40-42 are rejected as being dependent from rejected claims.

### ***Claim Rejections - 35 USC § 102***

Applicant's arguments, see Remarks, filed 1/16/2007, with respect to the rejection of claims 1, 43, and 56 under 35 USC 102 (e) as being anticipated by Pitkow (US P/N 7,038,680) have been fully considered and are persuasive. The rejection of has been withdrawn.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

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and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claim(s) because the examined claim is either anticipated by, or would be obvious over, the reference claim(s). see, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985).

Claims 1 and 12-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4-7 of copending Application No. 10/403,762. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending claims

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are generic to the instant claims. The instant claims are a species of the copending claims because the instant claims perform a sorting of the rows of data in the  $n \times m$  matrix based on a specific set of data, namely a pseudo-data vector.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **Conclusion**

#### **No Claim is allowed**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Sims, whose telephone number is (571)-272-7540.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ram Shukla can be reached via telephone (571)-272-0735.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

// Jason Sims //

*John S. Brusca 27 March 2007*  
JOHN S. BRUSCA, PH.D  
PRIMARY EXAMINER